Pat Salmon & Sons of Florida, Inc. *and* International Brotherhood of Teamsters, GA/FL Conference of Teamsters, AFL–CIO. Case 12–CA–20857

August 16, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge filed on May 19, 2000, the General Counsel of the National Labor Relations Board issued a complaint on June 8, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 12–RC–8389. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).)[1] The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On July 5, 2000, the General Counsel filed a Motion for Summary Judgment. On July 7, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits that the Union was certified as the exclusive bargaining representative of the unit employees, but attacks the validity of that certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. The Respondent admits that the Union requested it to bargain, but neither admits nor denies that it has failed and refused to bargain with the Union.[2]

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida corporation, with an office and place of business in Jacksonville, Florida, has been engaged in the business of transporting the United States mail.

Annually, the Respondent, in conducting its business operations has provided services valued in excess of $50,000 to the United States Postal Service at its Jacksonville and Tampa facilities and at other locations throughout the State of Florida.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the partial mail and partial manual ballot election with the ballots comingled and counted on October 7, 1999, the Union was certified on March 21, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time drivers employed by the Employer working out of Marietta, Georgia, and Daytona, Ft. Myers, Melbourne, Ocala, Orlando, Jacksonville, Tampa, and South Florida, Florida; but excluding office clerical employees, dispatch employees, fuel island employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

By letters dated April 10 and May 2, 2000, the Union requested the Union to bargain, and, since on or about April 10, 2000, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after April 10, 2000, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor prac-

[1] Accordingly, we find it unnecessary to respond to the Respondent's motion to supplement the record by including the transcript of the hearing before the hearing officer.

[2] Although the Respondent neither admits nor denies that it has refused the Union's request to bargain, nowhere in its answer or response does the Respondent contend that it has offered to meet and bargain with the Union since its initial request. On the contrary, it is clear from the Respondent's answer that the Respondent is in fact refusing to bargain with the Union in order to test the certification. Accordingly, we find that no issues warranting a hearing are raised by the Respondent with regard to the foregoing allegation. See *Indeck Energy Services*, 318 NLRB 321 (1995).

[3] And accordingly, we deny the Respondent's Cross-Motion for Summary Judgment.

tices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Pat Salmon & Sons of Florida, Inc., Jacksonville and Tampa, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with International Brotherhood of Teamsters, GA/FL, Conference of Teamsters, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time drivers employed by the Employer working out of Marietta, Georgia, and Daytona, Ft. Myers, Melbourne, Ocala, Orlando, Jacksonville, Tampa, and South Florida, Florida; but excluding office clerical employees, dispatch employees, fuel island employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Marietta, Georgia, Daytona, Ft. Myers, Melbourne, Ocala, Orlando, Jacksonville, Tampa and South Florida, Florida, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 10, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Teamsters, GA/FL Conference of Teamsters, AFL–CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time drivers employed by us working out of Marietta, Georgia, and Daytona, Ft. Myers, Melbourne, Ocala, Orlando, Jacksonville, Tampa, and South Florida, Florida; but excluding office clerical employees, dispatch employees, fuel island employees, guards and supervisors as defined in the Act.

PAT SALMON & SONS OF FLORIDA, INC.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."